No. 230

DEC 2 1939
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

PETER J. CARPENTER,

Petitioner,

v.

WABASH RAILWAY COMPANY, FRANK C. NICODEMUS, JR., and NORMAN B. PITCAIRN, Receivers of Wabash Railway Company, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, CENTRAL HANOVER BANK AND TRUST COMPANY, as Trustee, and T. J. MOSS TIE COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR RESPONDENT THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK AS TRUSTEE.

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November 27, 1939.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR RESPONDENT THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK AS TRUSTEE.

Peter J. Carpenter, the petitioner herein, seeks to intervene in the pending equity receivership of the Wabash Railway Company to assert priority of a judgment claim for personal injuries to the petitioner as an employee of the Railway Company.

This respondent The Chase National Bank of the City of New York is the Trustee under the Wabash Railway

Company Refunding and General Mortgage dated January 1, 1925, one of the mortgages in respect of which the petitioner is seeking to assert priority.

Opinions Below.

The opinion of the District Court of the United States for the Eastern Division of the Eastern District of Missouri is not reported (R. 78-83).

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 113-123) is reported in 103 F. 2d 996.

The petition of Carpenter, the petitioner herein, for a rehearing was denied without written opinion (R. 137).

Jurisdiction.

The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936.

Question Presented.

The question in this case is limited by the order granting the petition for certiorari to the question of the right of the petitioner to intervene in order to assert priority.

Statute.

Section 77(n) of the Bankruptcy Act, as amended August 11, 1939, is set forth in the Appendix, *infra*, p. 9.

Argument.

This respondent believes that the decision of the District Court, in the light of the provisions of Section 77(n) of the Bankruptcy Act then in effect, was clearly correct,

and that the arguments in the petitioner's brief before this Court seeking to show said decision to have been erroneous have been completely discussed and answered in the opinion of the District Court and in the opinion of the Circuit Court of Appeals for the Eighth Circuit affirming said decision; accordingly, this respondent will refrain from discussing these arguments.

By the amendment of August 11, 1939, the provisions of Section 77(n) were in effect extended to apply to "equity receiverships of railroad corporations now or hereafter pending in any court of the United States * * *."

This respondent concedes that, in determining what justice now requires in this proceeding, this Court may consider the change in the statute which has supervened since the decision of the District Court. A consideration of the amendment, however, does not lead to the conclusion, it is submitted, that the decision of the District Court should be reversed.

This respondent believes that, even in the light of the provisions of Section 77(n) now in effect, this Court may not decide, as part of the question before the Court in this case, whether the claim of the petitioner, under the amendment, is preferred.

The time for filing claims in the Wabash Railway Company equity receivership expired more than seven years prior to the amendment of August 11, 1939 (R. 24). The question of extending the time for filing claims rests in the discretion of the receivership court, to be exercised in the light of all the relevant facts involved in the receivership; the question has not been presented to the receivership court nor passed upon by it; since only the receivership court is in possession of all the relevant facts, this respondent believes that the Supreme Court, as an appellate court

in this certiorari proceeding, is not the appropriate tribunal to pass upon the question, but that the appropriate tribunal for the purpose is the receivership court.

The question before this Court is whether the decision of the District Court should be reversed. A reversal would in effect be an adjudication extending the time for filing a claim based upon the amendment of August 11, 1939. Such an adjudication by this Court, as an appellate court in this certiorari proceeding, would amount to an exercise of discretion by a tribunal lacking the essential information without which the discretion cannot be justly or wisely exercised.

The statute provides that "claims for personal injuries to employees of a railroad corporation * * * shall be preferred and paid out of the assets of such railroad corporation as operating expenses of such railroad."

The statute does not provide that the time for filing such claims shall be extended.

Suppose that on August 12, 1939, a railroad receivership had been almost terminated; suppose the sale of the assets to a new corporation had been made; suppose the reorganization plan had been agreed upon by the parties in interest and approved by the court; and suppose the court was about to confirm the sale and the new securities were about to be issued under the plan. The statute of August 11, 1939, contains no language, it is submitted, requiring that the time for filing priority claims for personal injuries to employees of the railroad be extended and that the receivership be continued and the sale stayed and the reorganization deferred until the filing and adjudication of such claims. No reason suggests itself for believing that any such obstructive and chaotic effect was intended by the statute.

Concededly the statute does not provide that claims barred by the statute of limitations shall nevertheless be preferred and paid. The statute deals with the priority to be accorded to certain claims, and does not deal with the question whether such claims may or may not in particular instances be barred by the statute of limitations or by other applicable limitations on the time for filing claims.

The orderly process of administration of a receivership estate requires a reasonable determination of the time and manner of filing and adjudicating claims.

By the order dated April 7, 1932, the time for filing claims was limited to July 1, 1932 (R. 23-25).

The first question is whether the time for filing priority claims for personal injuries based on the statute as amended may now be extended. Until this question is answered, the question of the priority of the petitioner's claim under the statute is not in issue. If the question as to extending the time is ultimately decided in the negative, there will be no occasion at all for passing on the particular priority question.

Only the District Court is in a position to determine the question as to extending the time.

Particularly in the case of a complex equity railroad receivership like that of the Wabash Railway Company, the determination can reasonably be made only in the light of the status of the receivership proceeding and the prospects of reorganization and the rights of the other parties in interest; only the receivership court possesses the essential information as to these considerations.

That the receivership court alone is adequately informed with respect to the complicated considerations involved in the question whether the time for filing claims should be extended, is illustrated by the rule that the dis-

cretion of the receivership court in the determination of that question is a broad discretion reviewable only for abuse: *Pennsylvania Steel Co.* v. *New York City Ry. Co.*, 229 Fed. 120 (C. C. A., 2nd Circ., 1915); *McDonald* v. *Aetna Indemnity Co.*, 91 Conn. 359 (1917); *Spooner* v. *Blair*, 209 Iowa 1113 (1930); *Matchan* v. *Phoenix Land Inv. Co.*, 159 Minn. 132 (1924); and Fletcher, Cyclopedia Corporations (Perm. Ed.), Section 7900.

Accordingly, this respondent submits that, unless and until the District Court upon proper application has passed upon the question as to extending the time for filing the petitioner's claim under the statute, the question of the priority of the claim is not properly before this Court.

The petition in this case did not ask the District Court to extend the time to file priority claims based upon the amendment of August 11, 1939.

It may well be that the enactment of the amendment of August 11, 1939, constitutes a reason why the petitioner may properly ask the District Court to pass upon the question of the propriety of such an extension of time, but the petitioner has not asked the District Court to do so.

This certiorari proceeding does not have the effect of bringing this question before the District Court; the reasons are set forth above why the District Court, and not the Supreme Court as an appellate tribunal, is believed to be the appropriate court to pass upon the question. Accordingly, the record in this certiorari proceeding shows no reversible error.

Conclusion.

Wherefore, this respondent respectfully submits that the decision of the District Court of the United States for

he Eastern Division of the Eastern District of Missouri hould be affirmed.

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November 27, 1939.

Appendix.

The Act of Congress approved August 11, 1939:

"[Public—No. 386—76th Congress]
[Chapter 689—1st Session]
[S. 2654]

AN ACT

"To amend subsection (n), section 77, of the Bankruptcy Act, as amended, concerning payment of preferred claims.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the first sentence of section 77, subsection (n), of the Bankruptcy Act, as amended, be further amended to read as follows:

"'(n) In proceedings under this section, and in equity receiverships of railroad corporations now or hereafter pending in any court of the United States, claims for personal injuries to employees of a railroad corporation, claims of personal representatives of deceased employees of a railroad corporation, arising under State or Federal laws, and claims now or hereafter payable by sureties upon supersedeas, appeal, attachment, or garnishment bonds, executed by sureties without security, for and in any action brought against such railroad corporation or trustees appointed pursuant to this section, shall be preferred and paid out of the assets of such railroad corporation as operating expenses of such railroad.'

"Approved, August 11, 1939."

Section 77 (n) of the Bankruptcy Act [11 USCA Section 205 (n)], prior to the amendment of August 11, 1939:

"In proceedings under this section, claims for personal injuries to employees of a railroad corporation,

claims of personal representatives of deceased employees of a railroad corporation, arising under State or Federal laws, and claims on August 27, 1935 or thereafter payable by sureties upon supersedeas, appeal, attachment, or garnishment bonds executed by sureties without security for and in any action brought against such railroad corporation or trustee appointed pursuant to this section, shall be preferred against and paid out of the assets of such railroad corporation as operating expenses of such railroad. No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in sections 151 to 163 of Title 45, as amended June 21, 1934, or as they may be hereafter amended. No reorganization effected under this title and no order of the court or Commission in connection therewith shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1929, against such carrier or against one of its predecessors in title, requiring the maintenance of offices, shops, and roundhouses at any place, where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title."